

#### **04 NCAC 16G .0103      DEFINITIONS**

As used in this Subchapter the words and phrases defined by G.S. 54C-4 and the following definitions apply:

- (1) "An affiliate of," or "a person affiliated with" used in connection with another specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is under common control with the person specified.
- (2) "Amount," when used in regard to securities, shall mean the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares of stock, or the number of units if relating to any other kind of security.
- (3) "Applicant" shall mean a savings institution that has applied to convert to stock ownership pursuant to this Subchapter.
- (4) "Broker" shall mean any person engaged in the business of effecting transactions in securities for the account of others.
- (5) "Dealer" shall mean any person who engages either for all or part of their time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
- (6) "Deposit account" shall mean that part of the liability of the savings institution that is credited to the account of the holder including certificates of deposit.
- (7) "Eligibility record date" shall mean the record date for determining eligible account holders of a converting savings institution.
- (8) "Eligible account holder" shall mean any person holding a qualifying deposit as determined in accordance with Rule .0313 of this Subchapter.
- (9) "Employee" shall not mean a director or executive officer of a savings institution.
- (10) "Equity security" shall mean the following:
  - (a) any stock or similar security;
  - (b) any security convertible, with or without considerations, into a security, or carrying any warrant or right to subscribe to or purchase a security; or
  - (c) any warrant or right to subscribe to or purchase a security.
- (11) "Executive Officer" shall mean any person performing a policy-making function with respect to any organization, whether incorporated or unincorporated.
- (12) "Investment representative" shall mean a professional investment advisor acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction.
- (13) "Market maker" shall mean a dealer who, with respect to a particular security:
  - (a) regularly publishes bona fide, competitive bid, and offer quotation in a recognized inter-dealer quotation system or furnishes bona fide competitive bid and offer quotations on request; and
  - (b) is ready, willing, and able to effect transactions in reasonable quantities at the quoted prices with other brokers or dealers.
- (14) "Material," when used to qualify a requirement to provide information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent savings institution member ought reasonably to be informed in voting upon the plan of conversion of the applicant.
- (15) "Negotiated transactions" shall mean transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting in its behalf and the purchaser or his investment representative.
- (16) "Offer," "offer to sell," or "offer of sale" shall mean every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or will be in privity of contract with an applicant.
- (17) "Person" is defined in G.S. 55-1-40.
- (18) "Proxy" shall mean every form of authorization by which a person is, or may be deemed to be, designated to act for a savings institution member in the exercise of his or her voting rights in the affairs of a savings institution. An authorization may take the form of failure to dissent or object.
- (19) "Purchase" and "buy" shall mean every contract to acquire a security or interest in a security for value.

- (20) "Sale" and "sell" shall mean every contract to dispose of a security or interest in a security for value.
- (21) "Security" shall mean any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security." It shall also include any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.
- (22) "Solicitation" and "solicit" shall mean:
  - (a) any request for a proxy whether or not accompanied by or included in a form of proxy;
  - (b) any request to execute, not execute, or revoke a proxy; or
  - (c) providing a form of proxy or other communication to savings institution members under circumstances calculated to result in the procurement, withholding, or revocation of a proxy. The terms shall not apply to the furnishing of a form of proxy to a savings institution member upon the unsolicited request of the member or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.
- (23) "Subscription offering" shall mean offering shares of capital stock, through nontransferable subscription rights, to:
  - (a) eligible account holders as required by Rule .0311(2) of this Subchapter;
  - (b) supplemental eligible account holders as required by Rule .0311(4) of this Subchapter;
  - (c) members entitled to vote at the meeting called to consider the conversion as required by Rule .0311(5) of this Subchapter;
  - (d) directors, executive officers, and employees, as permitted by Rule .0312(2) of this Subchapter; or
  - (e) eligible account holders, supplemental eligible account holders, and voting members as permitted by Rule .0312(3) of this Subchapter.
- (24) "Subsidiary" of a specified person shall mean a person controlled, directly or indirectly, through one or more intermediaries by the specified person.
- (25) "Supplemental eligible account holder" shall mean any person holding a qualifying deposit, except executive officers, directors, and their associates, as of the supplemental eligibility record date required by Rule .0311 of this Subchapter.
- (26) "Underwriter" shall mean any person who has purchased from an applicant with a view to, or any person who offers or sells for an applicant in connection with, the distribution of any security; or participates or has a direct or indirect participation in the direct or indirect underwriting of any undertaking. Underwriting shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" shall mean an underwriter in privity of contract with the applicant or other issuer of securities as to which he or she is the underwriter.

*History Note: Authority G.S. 54C-33; 54C-53;  
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